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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

FL

FILE: [REDACTED] Office: CHICAGO, IL (INDIANAPOLIS, IN) Date **JAN 12 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Italy on March 17, 1996. The applicant's mother, [REDACTED] was born in Germany on March 19, 1970, and she is a U.S. citizen. The applicant's father, [REDACTED] was born in Italy on January 29, 1966, and he is not a U.S. citizen. The applicant's parents married in Italy on October 9, 1994. The record reflects that the applicant was last admitted into the United States on January 10, 2003 as an L-2 nonimmigrant visa holder, and that his nonimmigrant status is valid through April 8, 2006. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1433.

The district director concluded that the applicant was ineligible for citizenship under section 322 of the Act, because he did not reside outside of the United States in the legal and physical custody of his U.S. citizen parent, as required by section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, counsel asserts that although the applicant and his family live temporarily in the United States for work-related reasons, they intend to return to Italy in 2006 when the applicant's father's temporary U.S. work assignment is over. Counsel asserts that the applicant's family owns a house in Italy and that their permanent place of residence is therefore in Italy.¹

Section 322 of the Act provides in pertinent part that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], that the following conditions have been fulfilled:

(1) At least one parent is . . . a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

¹ Counsel additionally asserts that the Branch Chief of the Washington, D.C. Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS) Customer Service Coordination Branch lead the applicant to believe that he would qualify for citizenship under section 322 of the Act. The AAO notes that the August 7, 2001 letter from the Washington, D.C. Service Branch Chief of Customer Service Coordination Branch, submitted by the applicant, does not constitute a binding Service opinion or decision. The AAO notes further that a review of the letter reflects a lack of Service knowledge regarding the specific facts of the applicant's case and an apparent intent by the Service to offer general information about filing an application for a certificate of citizenship.

(B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

Counsel asserts that the applicant meets section 322(a)(4) foreign residence requirements because he and his family own a home in Italy and plan to return to Italy once the applicant's father completes a temporary U.S. work assignment in 2006. The AAO finds counsel's assertion to be without merit.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his **principal, actual dwelling place in fact, without regard to intent.**" (Emphasis added). The Board of Immigration Appeals additionally clarified in, *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The record reflects that the applicant resides in Indianapolis with his U.S. citizen mother and his father at Indianapolis, Indiana, and that Indianapolis is the applicant's "actual principal dwelling place in fact". The AAO therefore finds that the applicant does not meet the section 322(a)(4) of the Act requirement that he reside outside of the U.S. in the legal and physical custody of his citizen parent. Because the applicant has failed to establish that he meets the foreign residence requirement, the AAO finds it unnecessary to address whether the applicant meets the remaining requirements set forth in section 322 of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Based on the above evidence, the applicant has failed to establish that he qualifies for a certificate of citizenship under section 322 of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.